

Todd M. Friedman (SBN 216752)
 Adrian R. Bacon (SBN 280332)
 Meghan E. George (SBN 274525)
 Thomas E. Wheeler (SBN 308789)
 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 21031 Ventura Blvd., Suite 340
 Woodland Hills, CA 91364
 Phone: (323) 306-4234
 Fax: 866-633-0228
 tfriedman@ toddflaw.com
 abacon@ toddflaw.com
 mgeorge@ toddflaw.com
 twheeler@ toddflaw.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.
 INC, individually and on behalf of all)
 others similarly situated,)

Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**

vs.)

HALLWAY REAL ESTATE INC. dba)
 LIONHART LENDING; DOES 1)
 through 10, inclusive,)
 Defendant(s).)

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of HALLWAY REAL ESTATE INC.
8 dba LIONHART LENDING (“Defendant”), in negligently, knowingly, and/or
9 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the
10 Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related
11 regulations thereby invading Plaintiff’s privacy.

12 2. The TCPA was designed to prevent calls like the ones described
13 within this complaint, and to protect the privacy of citizens like Plaintiff.
14 “Voluminous consumer complaints about abuses of telephone technology – for
15 example, computerized calls dispatched to private homes – prompted Congress to
16 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

17 3. In enacting the TCPA, Congress intended to give consumers a choice
18 as to how creditors and telemarketers may call them, and made specific findings
19 that “[t]echnologies that might allow consumers to avoid receiving such calls are
20 not universally available, are costly, are unlikely to be enforced, or place an
21 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this
22 end, Congress found that

23 “[b]anning such automated or prerecorded telephone calls
24 to the home, except when the receiving party consents to
25 receiving the call or when such calls are necessary in an
26 emergency situation affecting the health and safety of the
27 consumer, is the only effective means of protecting
28

1 telephone consumers from this nuisance and privacy
2 invasion.”

3 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
4 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
5 purpose).

6 4. Congress also specifically found that “the evidence presented to the
7 Congress indicates that automated or prerecorded calls are a nuisance and an
8 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also*,
9 *Mims*, 132 S. Ct. at 744.

10 5. In a recent decision, the Supreme Court interpreted the term
11 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic
12 telephone dialing system,’ a device must have the capacity either to store a
13 telephone number using a random or sequential generator *or* to produce a telephone
14 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
15 141 S.Ct. 1163 (2021) (emphasis added).

16 6. In *Duguid*, the Supreme Court provided an example of such systems,
17 stating: “For instance, an autodialer might use a random number generator to
18 determine the order in which to pick phone numbers from a preproduced list. It
19 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

20 7. The Sixth Circuit has recognized a distinction between automated
21 calls placed by a dialing system and fielded by a live agent, and agentless
22 prerecorded voice calls: “Congress drew an explicit distinction between ‘automated
23 telephone calls that deliver an artificial or prerecorded voice message’ on the one
24 hand and ‘calls place by ‘live’ persons’ on the other.” *Ashland Hosp. Corp. v. Serv.*
25 *Employees Int’l Union, Dist. 1199 WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

26 8. Similarly, the FTC has observed that “prerecorded calls are by their
27 very nature one-sided conversations, and if there is no opportunity for consumers
28 to ask questions, offers may not be sufficiently clear for consumers to make

1 informed choices before pressing a button or saying yes to make a purchase.” 73
2 FR 51164-01, 51167 (Aug. 29, 2008).

3 9. In the present case, Defendant and its agent utilized an ATDS to
4 initiate a call to Plaintiff. Plaintiff never provided express consent to Defendant
5 prior to Defendant placing the call to Plaintiff. As such, the use of ATDS gives
6 rise to a claim for violation of the TCPA.

7 **JURISDICTION & VENUE**

8 10. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiff alleges
9 claims under the TCPA, 47 U.S.C § 227 et seq., a federal law.

10 11. Venue is proper in the United States District Court for the Northern
11 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
12 business within the State of California and Plaintiff resides within the County of
13 Alameda. Further, Defendant targeted this County by calling Plaintiff.

14 **PARTIES**

15 12. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
16 is a rooting and plumbing business in Emeryville, California and is a “person” as
17 defined by 47 U.S.C. § 153 (39).

18 13. Defendant, HALLWAY REAL ESTATE INC. dba LIONHART
19 LENDING (“Defendant”) is a full-service mortgage company and is a “person” as
20 defined by 47 U.S.C. § 153 (39).

21 14. The above-named Defendant, and its subsidiaries and agents, are
22 collectively referred to as “Defendants.” The true names and capacities of the
23 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
24 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
25 names. Each of the Defendants designated herein as a DOE is legally responsible
26 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
27 Complaint to reflect the true names and capacities of the DOE Defendants when
28 such identities become known.

1 15. Plaintiff is informed and believes that at all relevant times, each and
2 every Defendant was acting as an agent and/or employee of each of the other
3 Defendants and was acting within the course and scope of said agency and/or
4 employment with the full knowledge and consent of each of the other Defendants.
5 Plaintiff is informed and believes that each of the acts and/or omissions complained
6 of herein was made known to, and ratified by, each of the other Defendants.

7 **COMMON FACTUAL ALLEGATIONS**

8 **A. Defendant Utilizes an ATDS to Place its Marketing Calls**

9 16. Plaintiff was called by a predictive dialer, which was characteristically
10 identified by no live agent being on the line when it was picked up, a pause, a click,
11 and then being transferred to a live agent. Defendant called Plaintiff using a system
12 that dials campaigns of numbers without human intervention.

13 17. Upon information and belief, Defendant uses a predictive dialer to
14 place calls *en masse* to the members of the prospective class

15 18. On information and belief, Plaintiff alleges that Defendant uses a
16 predictive dialing platform for outbound campaigns. Predictive dialing platforms
17 always have automated and predictive dialing capacity. Plaintiff alleges on
18 information and belief that the platform used by Defendant integrates programming
19 code substantially similar to the code described herein below. Upon information
20 and belief, the platform used by Defendant has the capacity to allow an operator to
21 1) import CSV files containing phone numbers of consumers, 2) utilize number
22 generators to assign these telephone numbers to a dialing campaign, and otherwise
23 store the telephone numbers, and 3) schedule outbound dialing campaigns at a later
24 time to happen automatically using number generation and other algorithmic
25 dialing tools.

26 19. The capacity of the Defendant's dialing platform to use random or
27 sequential number generators to store or produce telephone numbers will be
28 confirmed or refuted based on the code. Plaintiff alleges that such code exists in

1 the dialing platform used by Defendant.

2 ***i. The Predictive Dialer***

3 20. The following is the FCC’s description of a predictive dialer:

4 “A predictive dialer is an automated dialing system that uses a
5 complex set of algorithms to automatically dial consumers’
6 telephone numbers in a manner that “predicts” the time when a
7 consumer will answer the phone and a telemarketer will be available
8 to take the call. Such software programs are set up in order to
9 minimize the amount of downtime for a telemarketer. In some
10 instances, a consumer answers the phone only to hear “dead air”
11 because no telemarketer is free to take the call...A predictive dialer
12 is equipment that dials numbers and, when certain computer
13 software is attached, also assists telemarketers in predicting when a
14 sales agent will be available to take calls. The hardware, when paired
15 with certain software, has the capacity to store or produce numbers
16 and dial those numbers at random, in sequential order, or from a
17 database of numbers. Predictive dialers initiate phone calls while
18 telemarketers are talking to other consumers and frequently
19 disconnect those calls when a telemarketer is unavailable to take the
20 next call...Predictive dialers reduce the amount of down time for
21 sales agents, as consumers are more likely to be on the line when the
22 telemarketer completes a call.”

23 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
24 *of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 ¶¶ 8 fn 31, 131, and 146
25 (2003) (“2003 FCC Order”).

26 21. The following is description, in plain English, of a predictive dialer
27 typically operates: A dialer operator accesses a database of consumer contact
28 information, which is typically contained in a text delimited file, either in a CSV
file, text file, Microsoft Excel, or Microsoft Access file. In essence, this is a
spreadsheet, containing rows and columns of data, which includes telephone
numbers. The operator will load this data set into the dialing platform. The dialing
system will cut the data set into individual lines, unique to each telephone number
with an assigned row using a parser. Parsers will separate the data, and then index

1 the telephone numbers using either random or sequential number generators, but
2 most commonly sequential number generators. The program will then store the
3 telephone number using that number generator. The data is stored in temporary
4 cache or RAM memory, to be accessed by the dialer platform thereafter. A random
5 or sequential number generator is programmed to select and produce,
6 automatically, without any organic triggering event by a human being, the
7 telephone numbers, i.e. in accessing them from storage. Once the number
8 generator corresponds to a matching number in the stored list, that telephone
9 number will be “produced” from storage to the dialer, which then automatically
10 dials that telephone number. Thus, predictive dialers have the capacity to use
11 random or sequential number generators to both store and produce the telephone
12 number to be automatically dialed by the dialing program, without human
13 intervention.

14 22. To illustrate this using a real-world example that was provided to
15 undersigned counsel by a software engineer who is fluent in Java and has reviewed
16 dialer code, imagine a list of numbers as a lengthy sheet of lined notebook paper. A
17 parser cuts this into strips, and stores it in a paper tray, which is attached to a
18 scanner. Each strip of paper has a row number, and a telephone number. The
19 scanner uses a program to generate numbers, either sequentially or randomly. That
20 generator is hooked to the paper feed, which instructs the scanner to match the
21 generated number, to the corresponding strip of paper in the tray, and then scan that
22 telephone number from the stored list, through the scanner, and out the other side,
23 at which time the scanner is dialing the telephone number on that strip of
24 paper. Now imagine a scanner that accomplishes this with a tray containing
25 thousands of pages of paper in the blink of an eye. Once the tray is empty, the
26 dialing campaign is complete.

27 23. The program for dialing campaigns can be pre-set like a sprinkler
28 timer to dial the phone numbers at pre-set intervals and pre-set time periods, based

1 on how many available agents there are expected to receive calls. This is done by
2 way of yet another algorithm that is programmed to “predict” how long an average
3 call with a consumer takes, and dial only a certain volume of phone numbers per
4 time interval, so as to attempt to reach the highest possible volume of consumers,
5 without reaching so many consumers that the “abandonment rate” exceeds
6 regulatory limits set forth by the FCC. In crude terms, imagine a call center with
7 100 agents, a 10% chance that a call will be answered, and an average call length
8 of one minute. The predictive dialer will “predict” that it should place 1,000 calls
9 per minute, because 100 of those calls will be answered, and so 100 agents will be
10 available to speak with the consumer. Once those agents get off the line, calls will
11 already be automatically happening in the background from the autodialer’s
12 random and sequential number generator described above, and agents will be
13 connected with callers who pick up the line. This process is sometimes referred to
14 as algorithmic dialing.

15 24. Due to natural statistical variation, sometimes calls will last longer
16 than a minute, and there will be no available agent right away. This results in dead
17 air at the beginning of such calls, or abandoned calls. The percentage of such calls
18 that are picked up and result in dead air, is referred to as the “abandonment rate”
19 and is regulated by the FCC, because it is incredibly annoying to pick up the line
20 and be greeted with silence. This was heavily discussed during the congressional
21 hearings as highly problematic in 1991 during the TCPA hearings. In other words,
22 this is not new technology. It is the same technology Congress was trying to
23 regulate when it enacted the TCPA. It is the same technology that has been subject
24 to FCC regulations for decades.

25 25. Plaintiff alleges on information and belief that Defendant’s system has
26 predictive dialing capacity substantively similar to the illustrations described
27 herein, and therefore has the capacity to store and produce telephone numbers to
28 be called using a random or sequential number generator.

1 ***ii. The Radom/Sequential Number Generator***

2 26. Undersigned counsel have studied the code used to program predictive
3 dialers and other similarly-functioning autodialers in the past, with the assistance
4 of software engineers fluent in Java, and have found that such autodialers, when
5 used in automated mode, execute code that relies upon random or sequential
6 number generation to both store and produce numbers to be dialed by the
7 dialer. For instance, a common “parser” used in SMS blasters and predictive
8 dialing coding integrates the following open-source Apache code into an
9 autodialing dialing platform:

```
10           730    if (!this.recordList.isEmpty()) {
11           731        this.recordNumber++;
12           732        final String comment = sb == null ? null : sb.toString();
13           733        result=newCSVRecord(this,this.recordList.toArray(Constants.E
14           MPTY_STRING_ARRAY), comment,
15           734        this.recordNumber, startCharPosition);
16           735    }
17           736    return result;
18           737    }1
```

19 27. These lines of code, and specifically the “++” in line 731, represent an
20 operator token that generates sequential numbers as part of a loop. This loop is
21 used to select which number from the CSV file, will be dialed, and produce that
22 number to the dialer using a CSV parser. Such programs can dial thousands of
23 consumers in mere seconds, without any human intervention whatsoever, based on
24 whatever abandonment rate is targeted by the operator of the dialing platform. The
25 sequential number generator in the code above is executed in the process of mass

27 ¹ Available here: [https://commons.apache.org/proper/commons-csv/apidocs/src-](https://commons.apache.org/proper/commons-csv/apidocs/src-html/org/apache/commons/csv/CSVParser.html)
28 [html/org/apache/commons/csv/CSVParser.html](https://commons.apache.org/proper/commons-csv/apidocs/src-html/org/apache/commons/csv/CSVParser.html)

1 predictive dialing. The program cannot function, and therefore cannot dial any
2 phone numbers at all, without this sequential number generator.

3 28. Plaintiff alleges that Defendant used a predictive dialing system with
4 the similar capacity to autodial numbers as shown above. Functionally, that is
5 simply how predictive dialers work. They rely on random or sequential number
6 generators to instruct the data set to produce telephone numbers to the
7 dialer. Without this key component, a dialing campaign would require an agent to
8 manually place the call, through organic decision making, or as was the case
9 in *Duguid v. Facebook*, through some other organic one-to-one triggering event
10 that instructs the dialer to place the call.

11 29. Plaintiff will not be able to demonstrate whether the code for
12 Defendant's dialing system contains such random or sequential number generators
13 without doing discovery and obtaining the code for the dialing platform. Plaintiff
14 makes these allegations on information and belief based on the fact that there was
15 a pause at the beginning of the call, which is an indicator that the call was
16 autodialed with a predictive dialer.

17 30. The problem with these known realities is that because Plaintiff does
18 not and could not ever have access to Defendant's proprietary code, which is in its
19 sole possession, Plaintiff cannot allege with any more specificity that the system's
20 code contains such language. However, based on detailed discussions with experts
21 and years of litigation and expertise surrounding such technology, Plaintiff, and her
22 counsel, have a legitimate and sufficient good faith basis to make these allegations,
23 and assert that if the system is a traditional predictive dialer as alleged, *then it will*
24 *have some variation on the coding that is described herein*, which will undoubtedly
25 include either random or sequential number generators that are being executed in
26 conjunction with storing and dialing the telephone numbers, including the dialing
27 of Plaintiff's phone number.

28 31. In Defendant's overzealous attempt to market its services, it placed

(and continues to place) phone calls via ATDS to consumers who never provided consent to call and to consumers having no relationship with Defendant.

32. Defendant knowingly made (and continues to make) these telemarketing calls via ATDS without the prior express written consent of the call recipients. As such, Defendant not only invaded the personal privacy of Plaintiff and members of the putative Class, but also intentionally and repeatedly violated the TCPA.

**FACTS SPECIFIC TO PLAINTIFF ABANTE ROOTER AND PLUMBING
INC**

33. Plaintiff is the regular carrier and exclusive user of its cellular telephone number. The number is assigned to a cellular telephone service for which Plaintiff is charged for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

34. Plaintiff has never had a business relationship with Defendant.

35. Plaintiff never provided Defendant with prior express consent to contact Plaintiff on its phone via a telephone call.

36. Nonetheless, on or around October 6, 2020, Defendant called Plaintiff on Plaintiff's cell phone, attempting to advertise a home loan.

37. Defendant placed the October 6, 2020 phone call from the telephone number confirmed to belong to Defendant, (510) 249-7771.

38. The October 6, 2020 phone call began with a brief pause, then a "clicking" sound, and Plaintiff was then transferred to a live agent.

39. The sequence of events during the phone call evinced that Defendant used a predictive dialer, which is a form of an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1), to place the call.

40. Plaintiff suffered a concrete and particularized injury in fact as a result of the unsolicited telemarketing call Plaintiff received. The call invaded Plaintiff's privacy, causing annoyance, wasting Plaintiff's time, consuming use of Plaintiff's smartphone device without authorization, and otherwise invading Plaintiff's

1 privacy and intruding into Plaintiff's personal affairs without permission. The
 2 telemarketing call also constituted a form of the precise harm that Congress was
 3 attempting to prohibit with the TCPA, which was designed to remedy known
 4 tortious acts including invasions of privacy and nuisances caused to Americans by
 5 automated telemarketing calls placed without consent. Plaintiff actually suffered
 6 this precise injury by receiving the unwanted telephone call, and having Plaintiff's
 7 privacy so invaded through a disturbance of Plaintiff's solitude, and unwanted
 8 intrusion of her technology and personal space. Accordingly, Plaintiff has Article
 9 III standing to seek redress for these violations in Federal Court.

10 41. The call Defendant made to Plaintiff invaded Plaintiff's privacy and
 11 violated 47 U.S.C. § 227(b)(1).

12 42. Plaintiff has reason to believe Defendant has called, and continues to
 13 call, thousands of wireless telephone customers to market its products and services
 14 without consent required by the TCPA.

15 43. In order to redress injuries caused by Defendant's violations of the
 16 TCPA, Plaintiff, on behalf of itself and a class of similarly situated individuals,
 17 brings suit under the TCPA, 47 U.S.C. § 227, *et seq.*, which prohibits certain
 18 unsolicited calls to cell phones.

19 44. On behalf of the Class, Plaintiff seeks an injunction requiring
 20 Defendant to cease all wireless telemarketing and spam activities and an award of
 21 statutory damages to the class members, together with costs and reasonable
 22 attorneys' fees.

23 **CLASS ALLEGATIONS**

24 45. Plaintiff brings this action individually and on behalf of all others
 25 similarly situated, as a member of the proposed classes (hereinafter, "The Class"),
 26 defined as follows:

27 All persons within the United States who received any
 28 solicitation/telemarketing telephone calls made by or on

1 behalf of Defendant to said person's cellular telephone
2 made through the use of any automatic telephone dialing
3 system and/or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint

7 46. Plaintiff represents, and is a member of, The Class, consisting of all
8 persons within the United States who received any solicitation/telemarketing
9 telephone calls from Defendant to said person's cellular telephone made through
10 the use of any automatic telephone dialing system or an artificial or prerecorded
11 voice and such person had not previously provided their cellular telephone number
12 to Defendant within the four years prior to the filing of this Complaint.

13 47. Defendant, its employees and agents are excluded from The Class.
14 Plaintiff does not know the number of members in The Class, but believes the
15 Class's members number in the thousands, if not more. Thus, this matter should
16 be certified as a Class Action to assist in the expeditious litigation of the matter.

17 48. The Class is so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Class
19 members are unknown to Plaintiff at this time and can only be ascertained through
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
21 The Class includes thousands of members. Plaintiff alleges that The Class
22 members may be ascertained by the records maintained by Defendant.

23 49. Plaintiff and members of The Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
25 and The Class members via their cellular telephones thereby causing Plaintiff and
26 The Class members to incur certain charges or reduced telephone time for which
27 Plaintiff and The Class members had previously paid by having to retrieve or
28 administer messages left by Defendant during those illegal calls, and invading the
29 privacy of said Plaintiff and The Class members.

30 50. Common questions of fact and law exist as to all members of The

1 Class which predominate over any questions affecting only individual members of
2 The Class. These common legal and factual questions, which do not vary between
3 Class members, and which may be determined without reference to the individual
4 circumstances of any Class members, include, but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this
6 Complaint, Defendant made any telemarketing/solicitation call
7 (other than a call made for emergency purposes or made with
8 the prior express consent of the called party) to a Class member
9 using any automatic telephone dialing system or any artificial
10 or prerecorded voice to any telephone number assigned to a
11 cellular telephone service;
- 12 b. Whether Plaintiff and The Class members were damaged
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant should be enjoined from engaging in such
15 conduct in the future.

16 51. As a person that received a telemarketing/solicitation call from
17 Defendant using an automatic telephone dialing system or an artificial or
18 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
19 claims that are typical of The Class.

20 52. Plaintiff will fairly and adequately protect the interests of the members
21 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
22 class actions.

23 53. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Class members is impracticable. Even if every Class's member could afford
26 individual litigation, the court system could not. It would be unduly burdensome
27 to the courts in which individual litigation of numerous issues would proceed.
28 Individualized litigation would also present the potential for varying, inconsistent,

or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

54. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

55. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of The Class

56. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-55.

57. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

58. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

59. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of The Class

60. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-59.

61. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

62. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

63. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

64. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st day of January, 2022.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff